S.B. CIVIL WRIT PETITION NO.1550/2003

Dalip Singh Vs. Board of Revenue & anr.

Date : 11.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. H.S. Sandhu, for the petitioner.
Mr. Shyam Ladrecha, Addl. GA, for the respondents.

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Heard learned counsel for the parties.

Brief facts of the case are that the petitioner applied for allotment of land in Chak No.1 PB Murabba No.107/9. Instead of this land, the petitioner was allotted land of Murabba No.106/53 of the same Chak No.1 PB. The petitioner's allotment was questioned and the Collector, Bikaner in proceedings under Rule 22(3) of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975 (for short “the Rules”), set aside the allotment vide order dated 22.8.1996. The petitioner preferred revision petition against the order dated 22.8.1996 which was dismissed by the Board of Revenue vide order dated 20.7.2001. The grounds for cancellation are that the petitioner applied for a different land but the land of different murabba number was allotted to the petitioner by the allotting authority so that the petitioner may be given the land without there being any competition as there may be more

applicants for the land of murabba no.107/9.

According to the Collector, in case there were more than one applicants for the land, the land could have been allotted by auction only. By not auctioning the land of murabba no.107/9 or 106/53, loss has been caused to the State Government. Another reason given by the Collector is that no thorough enquiry was conducted by the allotting authority about the land which the petitioner was already holding. The Board of Revenue observed that the land of murabba no.106/53 was not notified for allotment, therefore, also there is illegality of allotment in favour of the petitioner.

Learned counsel for petitioner vehemently submitted that the allotting authority, after considering all the documents and facts, allotted the land to the petitioner. It is also submitted that the Collector was under impression that in case, there were more than one applicants, than the land could have been disposed of only by auction. Whereas in fact, there was no provision for auctioning the land even in case where there were more than one applicants. It is further submitted that at the relevant time, the land could not have been auctioned because at that time, in such a situation, land could have been given on the basis of priority only and, therefore, by adopting procedure as adopted, no loss has been caused to the State. The Rule to auction the land, in case more than one person eligible applied for the land, came into force

vide notification dated 22.9.1988 published in Gazette dated 13.7.1989 after the land was allotted to the petitioner.

According to learned counsel for the petitioner, in view of all above facts, the petitioner was rightly allotted the land and two courts below committed serious error of fact as well as error of law and proceeded on wrong assumption of law.

Learned Govt. Advocate vehemently submitted that the petitioner applied for a particular piece of land, then he could not have been allotted another piece of land. It is also submitted that by not auctioning the land, the allotting authority has given favour to the petitioner by allotting land on concessional price. It is also submitted that no enquiry was conducted about the petitioner's holding before allotting the land.

I have considered the rival submissions.

It appears from the facts of the case that the petitioner though applied for land of Murabba NO.107/9 and despite this fact which was in the knowledge of the allotting authority, the petitioner was allotted land of murabba no.106/53. Both the lands are situated in same chak no.1 PB.

According to learned counsel for the petitioner, the

cost of the land is the same. It appears from clause (iv) of Sub-Rule (4) of Rule 13A of the Rules that the procedure for allotment was inserted subsequently and the amendment was published in gazette on 13.7.1989. This aspect has not been considered by the two courts below.

It is also relevant to mention here that in this case, as the petitioner did not suppress any fact from the allotting authority and the allotting authority thought it proper to allot murabba no.106/53, then the fault cannot be attributed to the petitioner.

In view of the above, this writ petition is allowed, the orders dated 22.8.1996 (Annex.2) and 20.7.2001 (Annex.3) passed by Collector, Bikaner and Board of Revenue respectively are set aside. The matter is remanded back to District Collector, Bikaner to decide the proceedings afresh after giving opportunity of hearing to the parties and after looking into the entire record and relevant Rules. It may be observed that in case, it is found that the petitioner, though applied for land of murabba no.107/9 but the allotting authority, after application of mind and without causing any loss to the State and without giving any favour to the petitioner allotted the land of murabba no.106/53 and the petitioner's land will not exceed the prescribed limit by the said allotment, then allotment may be restored to the petitioner.

However, it is made clear that in case, there is a

transfer of land to any other department or transfer of jurisdiction to decide the matter under Rule 22(3) of the Rules of 1975, the Collector shall be free to transfer the matter to the said authority in pursuance of this order only.

(PRAKASH TATIA), J.

S.Phophaliya